

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MOBILE RELAY ASSOCIATES)	WT Docket No. 13-212
)	
Requests for Waivers to Permit Part 90 Use of)	
Channels on the Band Edges Between Part 90 and)	
Part 95 Spectrum)	

ORDER

Adopted: January 27, 2014

Released: January 28, 2014

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us applications and requests¹ filed by Mobile Relay Associates (MRA) for waiver of Sections 2.106 and 90.35 of the Commission's Rules to permit MRA to operate on frequency pairs 462/467.5375 MHz and 462/467.7375 MHz at locations in California,² Colorado,³ Nevada,⁴ and Florida.⁵ For the reasons set forth below, we grant the waiver requests and will process the applications.

2. *Background.* Frequencies 462.5375 MHz, 462.7375 MHz, 467.5375 MHz, and 467.7375 MHz are allocated for land mobile operations,⁶ but currently are not designated for use by the Industrial/Business Pool or any other Commission service.⁷ Rather, they are on the band edges between Industrial/Business Pool spectrum and General Mobile Radio Service (GMRS) spectrum.

3. MRA seeks assignment of these frequencies with a 4 kilohertz emission designator, which it contends will present no risk of harmful interference because its requested channels will not overlap any designated frequencies on either side, in light of the implementation of narrowbanding (maximum 12.5 kHz channel bandwidth or equivalent efficiency)⁸ by private land mobile radio (PLMR) licensees in the 150-174 MHz and 421-470 MHz bands.⁹ Further, MRA contends that there is widespread

¹ MRA filed a near-identical waiver request with each application. *See, e.g.*, Request for Rule Waiver (filed July 30, 2013) (Waiver Request).

² *See* FCC File No. 0005877470 (filed July 30, 2013 and amended Aug. 1, 2013 and Aug. 21, 2013).

³ *See* FCC File No. 0005895551 (filed Aug. 14, 2013 and amended Aug. 19, 2013).

⁴ *See* FCC File No. 0005895553 (filed Aug. 14, 2013 and amended Aug. 19, 2013).

⁵ *See* FCC File No. 0005898064 (filed Aug. 16, 2013).

⁶ *See* 47 C.F.R. § 2.106 (United States Table of Frequency Allocations). Consequently, we agree with Kenwood USA Corporation that no waiver of Section 2.106 is required. *See* Kenwood USA Corporation comments at 2 n.3.

⁷ *See* 47 C.F.R. § 90.35 (Industrial/Business Pool Frequency Table).

⁸ *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 99-87, RM-9332, 18 FCC Rcd 3034 (2003); Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004) (*Narrowbanding Third MO&O*); *see also* 47 C.F.R. §§ 90.203(j), 90.209(b).

⁹ *See* Waiver Request at 3.

and increasing PLMR congestion in the areas in which it seeks relief.¹⁰

4. The Wireless Telecommunications Bureau's Mobility Division (Division) sought comment on MRA's requests.¹¹ Most parties support MRA's waiver requests,¹² but two commenters express concern about interference to GMRS operations.¹³

5. *Discussion.* To obtain a waiver of the Commission's rules a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;¹⁴ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest or the applicant has no reasonable alternative.¹⁵ Based on the record before us, we conclude that MRA has presented sufficient facts to meet the standard for grant of the requested waivers.

6. We conclude that the underlying purpose of the rules would not be served by application to frequency pair 462/467.5375 MHz, and that grant of the waiver is in the public interest. The frequencies requested by MRA formerly represented the channel edge of the wideband PLMR frequency closest to the band edge between Industrial/Business Pool spectrum and GMRS spectrum. After the narrowbanding transition, these adjacent frequencies (462.5250 MHz and 467.5250 MHz) are no longer assignable for wideband operations, so there is no channel bandwidth overlap with MRA's requested frequency pair.¹⁶ We conclude that the public interest would be served by permitting the assignment of these frequencies to alleviate PLMR congestion at the requested locations. It would further the purpose of the narrowbanding rules to permit the efficient use of scarce PLMR spectrum.

7. With respect to frequency pair 462/467.7375 MHz, MRA initially failed to recognize that Industrial/Business frequency 462.750 MHz is exempt from narrowbanding and still may be assigned with a channel bandwidth of 25 kilohertz,¹⁷ which would overlap MRA's requested frequency pair. The Commission exempted this and other paging-only frequencies from narrowbanding because paging frequencies are not congested and the Commission was concerned that requiring a systemic overhaul of paging transmitters would harm the paging industry's ability to provide service.¹⁸ After the Division pointed out that frequency 462.750 MHz is narrowband-exempt, MRA and its frequency coordinator demonstrated that no incumbent licensee on the frequency operates in any of the areas at issue with an occupied bandwidth greater than 20 kilohertz and thus there is no overlap of occupied bandwidth with

¹⁰ See *id.*

¹¹ See Wireless Telecommunications Bureau Seeks Comment on Requests of Mobile Relay Associates for Waivers to Permit Part 90 Use of Channels on the Band Edges Between Part 90 and Part 95 Spectrum, *Public Notice*, WT Docket No. 13-212, 28 FCC Rcd 12802 (WTB MD 2013).

¹² See, e.g., Enterprise Wireless Alliance comments at 1; Rebel Communications, LLC comments at 1.

¹³ See P. Randall Knowles comments at 1; Personal Radio Steering Group, Inc. comments at 2.

¹⁴ 47 C.F.R. § 1.925(b)(3)(i).

¹⁵ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁶ Nor do MRA's requested 4-kilohertz frequencies overlap the adjacent 6-kilohertz Industrial/Business Pool frequencies (462.53125 MHz and 467.53125 MHz).

¹⁷ See Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology Provide Reminder of January 1, 2013 Deadline for Transition to Narrowband Operations in the 150-174 MHz and 421-470 MHz Bands, *Public Notice*, 27 FCC Rcd 14896, 14898 (WTB/PSHSB/OET 2012) (citing 47 C.F.R. § 90.35(c)(29)).

¹⁸ See *Narrowbanding Third MO&O*, 19 FCC Rcd at 25059-60 ¶ 33.

MRA's proposed 4-kilohertz emission.¹⁹ Consequently, we conclude that a waiver also is appropriate with respect to frequency pair 462/467.7375 MHz.

8. The Division's predecessor granted a similar waiver request in 2003.²⁰ The City of Burbank requested a narrowband frequency pair that was allocated for land mobile operations, but not designated for use by the Public Safety Pool or any other Commission service; rather, the frequencies were offset between Part 90 PLMR spectrum and Part 22 paging control spectrum. The Division's predecessor noted that a purpose of the frequency designations was to assign paging control channels under Part 22 with sufficient guard band spacing to adjacent Part 90 PLMR operations, and concluded that this purpose would not be served by application of the rules because there were no paging licensees on the adjacent Part 22 channel to incur interference.²¹ The Division's predecessor also concluded that grant of the waiver request would serve the public interest by facilitating access to spectrum in a congested area.²²

9. We are not persuaded by commenters' concerns regarding interference to adjacent-channel GMRS operations. P. Randall Knowles contends that MRA's proposed operations will overlap and interfere with existing licensed GMRS operations on frequencies 462.5375 MHz, 462.7375 MHz, 467.5375 MHz, and 467.7375 MHz.²³ Similarly, the Personal Radio Steering Group, Inc. contends that the "guardband" spectrum for which MRA seeks a waiver is appropriate and necessary to protect existing and future licensed GMRS operations.²⁴ We disagree. Because MRA proposes to operate with a 4 kilohertz emission, there is no spectral overlap with adjacent-channel GMRS operations. When the current frequency designations were adopted, PLMR stations operated in wideband mode and the frequencies between PLMR and GMRS spectrum were could not be used without overlap. With the development of equipment with an occupied bandwidth of 4 kilohertz, PLMR stations can operate without causing harmful interference or impacting the use of adjacent GMRS spectrum. Finally, Knowles suggests that any newly available spectrum adjacent to GMRS frequencies should be designated for GMRS use,²⁵ but this argument overlooks the fact that the GMRS technical rules do not provide for equipment with a narrow enough emission to operate on the frequencies in question without overlapping other channels.²⁶

10. Consequently, we grant MRA's request for waivers to operate on frequency pairs 462/467.5375 MHz and 462/467.7375 MHz in California, Colorado, Nevada, and Florida.

11. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(g), and 303(r) of the

¹⁹ See MRA comments at 2-3; Forest Industries Telecommunications comments at 2-3.

²⁰ See City of Burbank, California, *Memorandum Opinion and Order*, 18 FCC Rcd 23770 (WTB PSPWD 2003) (*Burbank*). The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division (PSPWD) were assumed by the Public Safety and Critical Infrastructure Division (PSCID). See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003). Pursuant to a Commission reorganization effective September 25, 2006, certain duties of PSCID were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

²¹ See *Burbank*, 18 FCC Rcd at 23772 ¶ 6; see also County of Westchester, New York, *Order*, 25 FCC Rcd 10843, 10848 ¶ 11 (PSHSB PD 2010) (similar).

²² See *Burbank*, 18 FCC Rcd at 23772 ¶ 7.

²³ See P. Randall Knowles (Knowles) comments at 1.

²⁴ See Personal Radio Steering Group, Inc. comments at 2.

²⁵ See Knowles comments at 2-3.

²⁶ See 47 C.F.R. §§ 95.631(a), 95.633(a).

Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(g), and 303(r), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Requests for Waiver filed by Mobile Relay Associates on July 30, 2013, in conjunction with application FCC File No. 0005877470; on August 14, 2013, in conjunction with applications FCC File Nos. 0005895551 and 0005895553; and on August 16, 2013, in conjunction with application FCC File No. 0005898064 ARE GRANTED, and the applications SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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Wireless Telecommunications Bureau